

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No.: EB-IHD-20-00031712
)	
City of Sandy, Oregon d/b/a)	NAL/Acct. No.: 202132080016
)	
SandyNet)	FRN: 0004119376

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 25, 2021

Released: February 25, 2021

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. The City of Sandy, Oregon d/b/a SandyNet (SandyNet), a facilities-based broadband provider, apparently failed to file FCC Form 477 twenty-seven times and apparently filed late three times. Taking into account SandyNet’s history of apparent Form 477 violations, we propose a penalty of \$10,000 against SandyNet for apparently failing to timely file its broadband data.

II. BACKGROUND

2. To accomplish its broadband goals, the Federal Communications Commission (Commission or FCC) requires facilities-based broadband service providers to file FCC Form 477 twice each year. The March 1 filing reports data as of December 31 of the prior year, and the September 1 filing reports data as of June 30 of the current year.¹ Form 477 contains important information that assists the Commission in carrying out its statutory mandates, including the requirement that the Commission “shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.”² Form 477 filings contain service speed and subscriber information that the Commission uses to assess the state of broadband availability in the United States, and to take steps to further the goal of increasing that availability.³ The Commission uses data obtained from FCC Form 477 to “describe the deployment of broadband infrastructure,”⁴ and the collected data enable the Commission to appropriately target universal service funds to unserved and underserved regions and to meet public safety obligations. Federal and state agencies and the general public also benefit from the data reported on Form 477.

¹ See 47 CFR §§ 1.7001, 1.7002; *FCC Form 477 Local Telephone Competition and Broadband Reporting Instructions for Filing as of December 31, 2019 and Beyond* at 32 (*December 31, 2019 FCC Form 477 Instructions*). Section 1.7001 directs FCC Form 477 filers to make filings “in accordance with the Commission’s rules and instructions to the FCC Form 477,” and warns that “[f]ailure to file the FCC Form 477 in accordance with the Commission’s rules and instructions to the Form 477 may lead to enforcement action pursuant to the Act and any other applicable law.” From time-to-time the Commission has issued a Public Notice shifting the filing data beyond March 1st or September 1st because those data coincide with a date that the Commission was officially closed (*e.g.*, due to a weekend of Federal holiday) or because of maintenance of the electronic filing system.

² 47 U.S.C. § 1302(a).

³ See *id.* § 1302(b).

⁴ *December 31, 2019 FCC Form 477 Instructions* at 4.

3. Since 2005, and beginning with the filing due September 1, 2005 for data as of June 30, 2005, the Commission has required “all facilities-based providers” of fixed and mobile broadband connections to end-users to submit counts of broadband connections in FCC Form 477.⁵ As explained in a related 2004 FCC news release, this includes facilities-based providers in rural areas, regardless of their size.⁶ Fixed wireless facilities-based broadband providers have been required to file both “deployment” and “subscription” data on their FCC Form 477 filings since 2014.⁷ The Commission has underscored the importance of timely and accurate FCC Form 477 filings through enforcement advisories and enforcement action.⁸

4. SandyNet is a facilities-based provider of broadband connections to end users via fiber and terrestrial fixed wireless.⁹ SandyNet also provides interconnected VoIP services.¹⁰ SandyNet holds three Commission licenses.¹¹

⁵ *Local Telephone Competition and Broadband Reporting*, WC Docket No. 04-141, Report and Order, 19 FCC Rcd 22340, 22345, para. 8 (2004) (*2004 Broadband Reporting Order*) (emphasis in original); *FCC Announces Electronic Posting of OMB-Approved Form 477 for the September 1, 2005 Filing and Data Collection Workshop to be Held on June 29, 2005*, Public Notice, 20 FCC Rcd 10454, 10456 (WCB 2005) (*OMB-Approved Form 477 Public Notice*). In 2008, the Commission ordered providers of interconnected voice over internet protocol (interconnected VoIP) service to begin reporting subscribership information on Form 477. *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9705, para. 28 (2008).

⁶ See News Release, FCC, FCC Improves Data Collection to Monitor Nationwide Broadband Rollout, Agency Also to Collect Better Information About Rural and Underserved Areas (Nov. 9, 2004), <https://www.fcc.gov/document/fcc-improves-data-collection-monitor-nationwide-broadband-rollout>; see also *2004 Broadband Reporting Order*, 19 FCC Rcd at 22345, para. 8.

⁷ See *Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, Report and Order, 28 FCC Rcd 9887, 9888, 9896-97, 9902-08, 9913-18, paras. 3, 20, 32-41, 56-68 (2013); *Additional Information for Form 477 Filers on New Data Submission Interface*, WC Docket No. 11-10, Public Notice, 29 FCC Rcd 3174 (WCB 2014); *Wireline Competition Bureau Releases Data Specifications for Form 477 Data Collection*, WC Docket No. 11-10, Public Notice, 28 FCC Rcd 12665 (WCB 2013).

⁸ See *Barrier Communications Corporation d/b/a BarrierFree*, Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10186 (2020) (*BarrierFree NAL*); *Rio Verde Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 2196 (EB 2015) (*Rio Verde Wireless NAL*), cancelled by Order, 30 FCC Rcd 10597 (EB 2015) (consent decree admitting violations and paying civil penalty); *FCC Enforcement Advisory – Providers Must File a Complete and Accurate Form 477 Report Every Six Months*, Public Notice, 30 FCC Rcd 10853 (EB 2015); *FCC Enforcement Advisory – Providers Are Reminded that They Must File Complete and Accurate Form 477 Reports Every Six Months*, Public Notice, 26 FCC Rcd 16769 (EB 2011).

⁹ FCC Form 477 Filed for data as of December 31, 2019 for City of Sandy, SandyNet (filed Apr. 29, 2020 at 19:49:22) (FCC Form 477 Filed for data as of December 31, 2019); see also SandyNet, *Residential Services*, <https://www.ci.sandy.or.us/residential-services> (last visited Feb. 17, 2021).

¹⁰ FCC Form 477 Filed for data as of December 31, 2019.

¹¹ FCC, Universal Licensing System, Microwave Public Safety Pool License – WQA602 – City of Sandy, OR, <https://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=3414181> (last visited Feb. 17, 2021); FCC Universal Licensing System, Microwave Public Safety Pool License – WQA603 – City of Sandy, OR, <https://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=3414182> (last visited Feb. 17, 2021); FCC, Universal Licensing System, Public Safety Pool/Conventional License – WQF209 – City of Sandy, <https://wireless2.fcc.gov/UlsApp/UlsSearch/license.jsp?licKey=3607622> (last visited Feb. 17, 2021). The FCC Universal Licensing System (ULS) is a free to use and publicly available database, <https://www.fcc.gov/wireless/systems-utilities/universal-licensing-system> (last visited Feb. 17, 2021).

5. Although it appears to have offered broadband services to end users since at least 2004,¹² SandyNet apparently did not make its first Form 477 filings with the FCC until 2020. SandyNet apparently made its first ever Form 477 filing on April 29, 2020.¹³ That filing had been due on March 2, 2020, almost two months earlier. Subsequently, on July 14 and 15, 2020, SandyNet filed the Forms 477 that had been due on March 8 and September 3, 2019, respectively.¹⁴

III. DISCUSSION

6. Violations of the FCC Form 477 filing requirements are significant because FCC Form 477 is a critical fact-gathering instrument that informs the Commission's efforts to advance broadband availability. Moreover, in many instances service providers submitting FCC Form 477 data have the best, if not the only, reliable data about where their facilities are located and which areas they can serve. Timely data is essential to the mission of fostering the availability of broadband services across the United States, and failing to provide it materially impairs the Commission's ability to assess broadband deployment and to measure the subscribership upon which Commission policy is based.

A. SandyNet Apparently Violated Sections 1.7001 and 1.7002 of the Commission's Rules

7. We conclude that SandyNet apparently violated sections 1.7001 and 1.7002 of the Commission's rules by failing to make twenty-seven required Form 477 filings – beginning in September 2005 and then twice each year from 2006-2018 – and by failing to timely file three Forms 477, which were due on March 2, 2020, September 3, 2019, and March 8, 2019.¹⁵

8. Even though SandyNet has been providing facilities-based broadband service to end users for at least sixteen years¹⁶ and therefore has been required to file FCC Form 477 twice every year for at least fifteen years,¹⁷ it apparently never made a required filing until 2020. Specifically, SandyNet apparently failed to file FCC Form 477 twenty-seven times: once in 2005, and twice every year since then through 2018. In addition, SandyNet apparently late-filed Forms 477 that were due on March 8,

¹² City of Sandy Comprehensive Annual Financial Report, Fiscal Year Ended June 30, 2019 at iii (Dec. 30, 2019), on file with the Oregon Secretary of State, <https://secure.sos.state.or.us/muni/public.do> (last visited Feb. 17, 2021) (City of Sandy Annual Financial Report for 2019) (“SandyNet—The City of Sandy has come a long way in the last 16 years as an Internet Service Provider”); City of Sandy Comprehensive Annual Financial Report For The Fiscal Year Ended June 30, 2004 at ii (Oct. 15, 2004), on file with the Oregon Secretary of State, <https://secure.sos.state.or.us/muni/public.do> (last visited Feb. 17, 2021) (City of Sandy Annual Financial Report for 2004) (“The City's telecommunications utility, SandyNet, began offering wireless broadband service in addition to DSL service” during the year ended June 30, 2004); *see also* League of Oregon Cities Comments, WC Docket No. 11-59, Appx. A at 25 (rec. Jul. 15, 2011) (League of Oregon Cities Comments) (listing SandyNet as an “Internet Service Provider” that began providing services in 2003).

¹³ FCC Form 477 Filed for data as of December 31, 2019.

¹⁴ FCC Form 477 Filed for data as of December 31, 2018 for City of Sandy/SandyNet (filed Jul. 14, 2020 at 02:11:56) (FCC Form 477 Filed for data as of December 31, 2018); FCC Form 477 Filed for data as of June 30, 2019 for City of Sandy, SandyNet (filed Jul. 15, 2020 at 02:46:25) (FCC Form 477 Filed for data as of June 30, 2019).

¹⁵ *See* 47 CFR §§ 1.7001, 1.7002.

¹⁶ City of Sandy Annual Financial Report for 2019 at iii; City of Sandy Annual Financial Report for 2004 at ii; *see also* League of Oregon Cities Comments at 25.

¹⁷ *2004 Broadband Reporting Order*, 19 FCC Rcd at 22345, para. 8; *OMB-Approved Form 477 Public Notice*, 20 FCC Rcd at 10456.

2019, September 3, 2019, and March 2, 2020.¹⁸ Of these, only the filing due on March 2, 2020 is within our one-year statute of limitations for proposing a forfeiture.¹⁹

B. Proposed Forfeiture

9. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of the [Act] or of any rule, regulation, or order issued by the Commission.”²⁰ For the type of violation at issue here, section 503(b)(2)(D) of the Act authorizes us to assess a forfeiture of up to \$20,731 for each violation or each day of a continuing violation, up to a statutory maximum of \$155,485 for a single act or failure to act.²¹ In exercising our forfeiture authority, we must consider the “nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²²

10. In addition, the Commission has established forfeiture guidelines that establish base penalties for certain violations and identify criteria that we consider when determining the appropriate penalty in any given case.²³ Section 1.80(b) of the Commission’s rules establishes a base forfeiture of \$3,000 for failure to file a required form or information, for each violation or each day of a continuing violation. We have discretion, however, to depart from these guidelines, taking into account the particular facts of each individual case.²⁴

11. Given the critical need to ensure accurate broadband services data and the fundamental role that FCC Form 477 data plays in policymaking and broadband subsidy funding decision-making, including accurate targeting of such subsidies only to areas in need of them, violations of FCC Form 477 filing obligations are especially serious.²⁵ Here, SandyNet apparently has missed twenty-seven filings in total. All twenty-seven are violations of our rules. SandyNet submitted its Forms 477 due in March and September of 2019 in July 2020.²⁶ Its March 2020 Form 477 was almost two months late. Even though

¹⁸ FCC Form 477 Filed for data as of December 31, 2018; FCC Form 477 Filed for data as of June 30, 2019; FCC Form 477 Filed for data as of December 31, 2019.

¹⁹ Section 503(b)(6) of the Communications Act of 1934, as amended (Act), prohibits the Commission from proposing a forfeiture penalty if the violation charged occurred more than one year prior to the date of the issuance of the notice of apparent liability. 47 U.S.C. § 503(b)(6).

²⁰ 47 U.S.C. § 503(b)(1)(B).

²¹ 47 U.S.C. § 503(b)(2)(D); *see generally* *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 35 FCC Rcd 14879 (EB 2020); *see also* Federal Communications Commission, *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 86 Fed. Reg. 3830 (Jan. 15, 2021).

²² 47 U.S.C. § 503(b)(2)(E); *see also* 47 CFR § 1.80(b)(9).

²³ 47 CFR § 1.80(b)(9), Note to paragraph (b)(8).

²⁴ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098–99, para. 22 (1997) (noting that “[a]lthough we have adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, we retain our discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under our general forfeiture authority contained in Section 503 of the Act.”).

²⁵ *See BarrierFree NAL*, 35 FCC Rcd at 10202, para. 41.

²⁶ *See supra* para. 5.

the statute of limitations for assessing a forfeiture has run on all but one violation,²⁷ this is compelling evidence of a history of disregard for the Commission's filing requirements.

12. Considering that SandyNet has an apparent history of prior offenses that fall outside the statute of limitations, an upward adjustment of the \$3,000 base forfeiture is justified. As a result of its three late-filed and twenty-seven never-filed Forms 477, SandyNet's data were not included in Commission reports and analysis, which distorted the actual broadband deployment and subscription figures for the United States. Thus, based on these factors, as well as the gravity of impact that such missing data have on guiding broadband policy and monetary decision-making, we propose an upward adjustment of \$7,000 for SandyNet's apparently late March 2020 filing, which takes into account the circumstances surrounding the apparent violation and SandyNet's history of apparently failing to file, and to timely file, Form 477.²⁸

13. Therefore, after applying section 1.80 of the Commission's rules, and the statutory factors, we propose a total forfeiture of \$10,000, for which SandyNet is apparently liable.²⁹

IV. CONCLUSION

14. We have determined that SandyNet apparently willfully or repeatedly violated sections 1.7001 and 1.7002 of the Commission's rules. Accordingly, SandyNet is apparently liable for a \$10,000 forfeiture.

V. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act and section 1.80 of the Rules,³⁰ the City of Sandy, Oregon d/b/a SandyNet is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR FORFEITURE** in the amount of ten thousand dollars (\$10,000) for apparently willfully and repeatedly violating sections 1.7001 and 1.7002 of the Commission's rules.³¹

16. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's rules,³² within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture, the City of Sandy, Oregon d/b/a SandyNet **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 19 below.

17. The City of Sandy, Oregon d/b/a SandyNet, shall send electronic notification of payment to Victoria Randazzo, Enforcement Bureau, Federal Communications Commission, at Victoria.Randazzo@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),³³ or by wire transfer. The Commission no longer

²⁷ See *supra* para. 8 and note 19 (noting the statute of limitations has run on all but one of the late filings).

²⁸ See *BarrierFree NAL*, 35 FCC Rcd at 10187 n.1 (the Commission may use a history of violations, including expired violations, as a basis for upwardly adjusting a proposed forfeiture, under section 503(b)(2)(E)); *Rio Verde Wireless NAL*, 30 FCC Rcd at 2201, para. 18 (same).

²⁹ Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

³⁰ 47 U.S.C. § 503(b); 47 CFR § 1.80.

³¹ 47 CFR §§ 1.7001, 1.7002.

³² 47 CFR § 1.80.

³³ Payments made using the Commission's Fee Filer system do not require the submission of an FCC Form 159.

accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected.³⁴

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).³⁵ For additional detail and wire transfer instructions go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and then choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated to the NAL Account – the bill number is the NAL Account number with the first two digits excluded – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

18. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554 and e-mailed to Scott Radcliffe, Revenue & Receivables Operations Group, FCC Office of the Managing Director, at Scott.Radcliffe@fcc.gov.³⁶ If you have any questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRES@fcc.gov.

19. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission’s rules.³⁷ The written statement must be mailed to Jeffrey J. Gee, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, and must include the NAL/Acct.

³⁴ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRES@fcc.gov.

³⁵ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

³⁶ See 47 CFR § 1.1914.

³⁷ 47 CFR §§ 1.16, 1.80(f)(3).

No. referenced in the caption. The written statement shall also be e-mailed to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov and to Victoria Randazzo at Victoria.Randazzo@fcc.gov.

20. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of 47 U.S.C. § 503(b)(2)(E) support that result.³⁸

21. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested to: City of Sandy, Oregon d/b/a SandyNet, c/o Kim Yamashita, 39250 Pioneer Blvd, Sandy, OR 97055, and Mayor Stan Pulliam, City of Sandy, Oregon, 39250 Pioneer Blvd, Sandy, OR 97055.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

³⁸ *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).